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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

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15 UNITED STATES DISTRICT COURT
16 SOUTHERN DISTRICT OF CALIFORNIA

17 '10 CV 1146 IEG WMc

18 CASE NO. _____

19
20 In re Application of
21 CHEVRON CORPORATION, a Delaware
22 corporation,
23
24 Applicant,
25
26 E-TECH INTERNATIONAL, a New Mexico
27 organization, and WILLIAM POWERS, an
28 individual,
29
30 Respondents.

APPLICATION OF CHEVRON
CORPORATION FOR AN ORDER UNDER
28 U.S.C. § 1782 PERMITTING CHEVRON
CORPORATION TO ISSUE A SUBPOENA
FOR THE TAKING OF A DEPOSITION
AND THE PRODUCTION OF
DOCUMENTS FROM E-TECH
INTERNATIONAL AND WILLIAM
POWERS

[Civil Cover Page; Memorandum of Points and
Authorities; Declarations of A. Neuman, J. Sabovich
and M. Younger; Request for Judicial Notice; Notice
of Related Actions; Certificate of Interested Parties
and Corporate Disclosure; and [Proposed] Order
Filed Concurrently Herewith]

ORIGINAL

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1 Based upon the annexed declarations of James M. Sabovich, Michael L. Younger and Andrea E.
 2 Neuman ("Neuman Decl.") and the accompanying memorandum of points and authorities, Chevron
 3 Corporation ("Chevron") hereby applies to this Court for an Order, pursuant to 28 U.S.C. § 1782, and
 4 Rules 26, 30 and 45 of the Federal Rules of Civil Procedure, granting Chevron leave to serve William
 5 Powers and E-Tech International (collectively "E-Tech" or "Respondents") with the subpoenas annexed
 6 to the Neuman Declaration as Exhibits A and B, respectively. Chevron further requests an Order to
 7 Show Cause why the subpoenas should not issue, due to significant time exigencies here. As was held
 8 days ago in denying a stay of another of Chevron's 1782 applications pending Plaintiffs' and
 9 Respondents' appeal of the decision granting it, "[t]he Lago Agrio Plaintiffs are pushing the Ecuadorian
 10 court to close the evidentiary phase of that litigation and immediately enter a multibillion dollar
 11 judgment against Chevron, thus preventing Chevron from placing before that court the likely relevant
 12 evidence contained in the [discovery sought]. Those plaintiffs intend, if they succeed, to attempt to
 13 enforce such a judgment around the world." RJN, Exh. 6, 81. Accordingly, Chevron requests an Order
 14 to Show Cause be issued so an expeditious briefing schedule can be established to resolve any
 15 objections.

16 The requirements of Section 1782 are met by Chevron's Application. First, all Respondents
 17 reside or may be found in the Southern District of California. Second, the discovery sought is for use in
 18 proceedings currently pending before two foreign tribunals: *Maria Aguinda y Otros v. Chevron*
 19 *Corporation* pending in the Superior Court of Nueva Loja, Ecuador (the "Lago Agrio Litigation"), and
 20 *Chevron Corporation and Texaco Petroleum Company vs. The Republic Of Ecuador*, pending in the
 21 Permanent Court of Arbitration in the Hague (the "Treaty Arbitration"). Third, as a litigant in those
 22 proceedings, Chevron is an "interested person" within the meaning of Section 1782. The discretionary
 23 factors set out by the United States Supreme Court in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542
 24 U.S. 241, 249 weigh in favor of granting the Application. Those factors are: (1) whether the person
 25 from whom discovery is sought is a participant in the foreign proceeding; (2) the receptivity of the
 26 foreign tribunal to federal-court assistance; (3) whether the request conceals an attempt to circumvent
 27 foreign proof-gathering restrictions; and (4) whether the request is unduly intrusive or burdensome.
 28 None of the Respondents is a "participant" in either the Lago Agrio Litigation or the Treaty Arbitration

1 within the meaning of Section 1782. Both Treaty tribunals and Ecuadorian Courts have been
 2 historically receptive to Section 1782 assistance from federal courts. *See In the Matter of Compania*
 3 *Chilena de Navegacion Interoceanica S.A.*, No. 03 CV 5382 (ERK), 2004 U.S. Dist. LEXIS 6408
 4 (E.D.N.Y. Jan. 29, 2004); *In re Application of Noboa*, Nos. M18-302, M19-111, 1995 U.S. Dist. LEXIS
 5 14402 (S.D.N.Y. Oct. 3, 1995); *In re Oxus Gold PLC*, No. MISC 06-82-GEB, 2007 U.S. Dist. LEXIS
 6 24061 (D.N.J. Apr. 2, 2007); *Ukrnafta v. Carpatsky Petroleum Corp.*, No. 3:09 MC 265 (JBA), 2009
 7 U.S. Dist. LEXIS 109492 (D. Conn. Aug. 27, 2009); *Norfolk S. Corp. v. Gen. Sec. Ins. Co.*, 626 F. Supp.
 8 2d 882 (N.D. Ill. 2009).

9 The Application does not conceal an attempt to circumvent foreign proof-gathering restrictions
 10 in either of the foreign proceedings. A petitioner under Section 1782 need not show evidence to be
 11 discoverable or admissible in the foreign jurisdiction. *Intel Corp.*, 542 U.S. at 261. Rather, in
 12 determining whether a petition is merely an effort to circumvent foreign proof-gathering restrictions, the
 13 consideration for a district court is whether the discovery is being sought in bad faith. *Minatec Fin.*
 14 *S.A.R.L. v. SI Group Inc.*, No. 1:08-CV-269 (LEK/RFT), 2008 U.S. Dist. LEXIS 63802, at *26
 15 (N.D.N.Y Aug. 18, 2008). Based on the evidence submitted, Chevron's request for discovery is a good
 16 faith effort to obtain probative evidence. Finally, the discovery requests are not unduly intrusive or
 17 burdensome. The discovery requested goes to central issues in both foreign proceedings and would be
 18 permitted under the Federal Rules of Civil Procedure.

19 Chevron has filed 1782 petitions in five other jurisdictions, seeking, among other things,
 20 discovery from Plaintiffs' environmental consultants and others regarding this collusion between
 21 Cabrera and the Plaintiffs. These petitions have been granted in Georgia, Colorado, New York, and
 22 Texas while one is currently pending in New Jersey. RJN, Exhs. 1-4. No such Application by Chevron
 23 has been denied. Plaintiffs began opposing these Applications after the proceeding in Georgia resulted
 24 in testimony from one of their former experts, Dr. Calmbacher, revealing that Plaintiffs had submitted
 25 two reports under his name in the Lago Agrio Litigation, assessing millions in remediation costs that Dr.
 26 Calmbacher did not author: "I did not reach these conclusions and I did not write this report."
 27 Declaration of James M. Sabovich ("Sabovich Decl."), Exh. A, 6-8. Three courts have addressed
 28 Plaintiffs' various objections to discovery and all have rejected them. RJN, Exhs. 2-4.

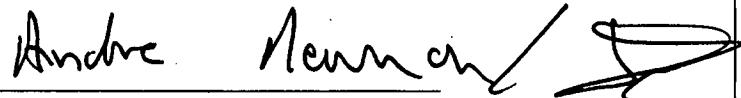
1 Chevron anticipates that Plaintiffs will nonetheless oppose this discovery. Accordingly, it
2 respectfully requests that this Court issue an Order to Show cause establishing a rapid briefing schedule
3 to dispense with Plaintiffs' objections. Chevron proposes that Plaintiffs be granted one week from the
4 date of the issuance of the Order to Show Cause to oppose, that Chevron receive three days for its reply,
5 and that, if the Court wishing a hearing, that it be held within two days of Chevron's reply. Chevron
6 thereafter respectfully requests that this Court enter an Order, pursuant to Rules 26, 30 and 45 of the
7 Federal Rules of Civil Procedure and 28 U.S.C. § 1782, granting it leave to serve E-Tech and William
8 Powers with the subpoenas annexed to the Declaration of Andrea E. Neuman as Exhibits A and B.

9

10 DATED: May 27, 2010

Respectfully submitted,

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Court Name: USDC California Southern
Division: 3
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Cashier ID: bhartman
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CIVIL FILING FEE
For: CHEVRON V E-TECH INTL
Case/Party: D-CAS-3-10-CV-001146-001
Amount: \$350.00

CHECK
Check/Money Order Num: 123955
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.

